

38. (Withdrawn) A process for cleansing the skin or hair of a mammal comprising applying to said skin or hair an effective amount of the self foaming composition according to claim 1.

Remarks

I. Status of the Claims

Claims 1-38 are pending in this application. Claims 34-38 have been withdrawn from consideration. Claim 1 has been amended to change "surfactant compositon" to "surfactant mixture" and to change "self foaming agent" to "at least one self foaming agent" to provide proper antecedent basis. Applicants submit that the amendment to the claims does not introduce new matter and is fully supported by the specification and claims, as originally filed. Applicants request the Examiner to enter the amendment under 37 C.F.R. § 1.116(b) because the amendments to the claims present the rejected claims in better form for consideration on appeal.

II. Claim Rejections Under 35 U.S.C. § 103

A. The Rejection over U.S. Patent No. 5,334,325 in view of U.S. Patent No. 5,599,549

The Examiner has rejected claims 1 – 14, 17, 18, 21 – 29, and 31 - 33 under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5,334,325 ("Chaussee") in view of United States Patent No. 5,599,549 ("Wivell"). Applicants respectfully disagree with this rejection. The Examiner acknowledges that Chaussee does not teach or suggest a liquid crystal composition. The Examiner relies on Wivell for teaching a cleansing composition that includes a dispersion of oil that may be in the form of a liquid crystal. The Examiner then concluded that the present invention is obvious over the combined references. Applicants respectfully disagree.

Wivell does not teach a self-foaming composition wherein the composition is in the form of a liquid crystal. In contrast, Wivell teaches a personal cleansing composition comprising surfactant, a suspending agent, a dispersed, insoluble, oil phase, and water. Wivell teaches that the dispersed, insoluble, oil phase exists as a separate and distinct phase of fine particles, aggregates or liquid crystals within the water phase. Although the oil

phase of the Wivell composition may be in the form of a liquid crystal, the Wivell composition, in its entirety, is not in the form of a liquid crystal. Clearly, there is no teaching or suggestion of a composition comprising a surfactant mixture and at least one self foaming agent, wherein the composition is in the form of a liquid crystalline structure.

The Examiner argues that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the composition of Chaussee by adding the dispersing phase of the conditioning oil phase as motivated by Wivell because of an expectation of successfully producing a foaming cosmetic with liquid crystal structure."

As the Examiner is well aware, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. § 2143.

Here, there is nothing in the teachings of Wivell that would provide one of ordinary skill in the art with the motivation to modify the compositions of Chaussee as suggested by the Examiner. The Examiner's statement regarding motivation is simply "an expectation of successfully producing a foaming cosmetic with liquid crystal structure." Why would one of ordinary skill in the art want to produce a foaming cosmetic with liquid crystal structure? Wivell does not teach any benefits of such in the compositions of Chaussee. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. See M.P.E.P. § 2143.01, p. 2100-131.

Further, even if one of ordinary skill in the art were somehow motivated to make the modification suggested by the Examiner, there is no teaching or suggestion in Wivell or Chaussee that the dispersed, insoluble, oil phase which exists as a separate and distinct phase of fine particles, aggregates or liquid crystals within the water phase, could be successfully incorporated into the Chaussee compositions. Indeed, there is no teaching or suggestion in Chaussee of separate oil and water phases.

Finally, even if the Wivell compositions were modified as suggested by the Examiner, all of the claimed limitations are not taught or suggested. Neither Wivell nor Chaussee, taken alone or in combination, teach or suggest a self foaming composition

comprising a surfactant portion and a self foaming agent in the form of a liquid crystalline structure. The Examiner argues that Wivell “clearly indicates that the composition can be in the form of liquid crystal in col. 4, lines 40-44.” As discussed above, Wivell clearly limits the discussion of liquid crystals to the oil phase, which is a “separate and distinct phase” within the water phase. Further, neither Wivell nor Chaussee teach or suggest a self foaming composition comprising a surfactant mixture and a self foaming agent wherein the surfactant portion comprises a combination of (a) anionic; (b) amphoteric surfactant and (c) optionally nonionic surfactant and wherein the ratio of (a) to (b) to (c) is selected such that when the surfactant mixture is mixed with the self foaming agent a gel consistency is obtained. Accordingly, Applicants respectfully submit that a prima facie case of obviousness has not been established and the rejection should be withdrawn.

B. The rejection over Chaussee in view of Wivell further in view of United States Patent No. 6,333,362 .

The Examiner has rejected claims 15, 16, and 30 under 35 U.S.C. 103(a) as being unpatentable over Chaussee and Wivell further in view of U.S. Patent No. 6,666,362 (“Lorant”). Applicants respectfully traverse this rejection. Lorant fails to remedy the deficiencies of Chaussee and Wivell. Specifically, Lorant fails to teach or suggest a self foaming composition in the form of a liquid crystal. Accordingly, Applicants respectfully request that the rejection be withdrawn.

C. The rejection over Chaussee in view of Wivell and further in view of U.S. Patent No. 5,858,343.

The Examiner has rejected claims 19 and 20 under 35 U.S.C. 103(a) as being unpatentable over Chaussee, Wivell, Lorant further in view of United States Patent No. 5,858,343 (“Szymczak”). Applicants respectfully traverse this rejection. Like, Lorant, Szymczak fails to remedy the deficiencies of Chaussee and Wivell. Indeed, none of the references, take alone or in any combination, teach or suggest a self foaming composition in the form of a liquid crystal. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Applicants respectfully submit that none of the references cited by the Examiner, nor the combination of the references teaches or suggests the present invention. Accordingly, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. 103(a).

III. Conclusion

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. An early and favorable response is earnestly solicited. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/JBP-555/EMH. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,



Erin M. Harriman
Reg. No. 40,410
Attorney for Applicants

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-3619
Dated: August 9, 2004